

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,)	CASE NO. 8:10CR193
)	
Plaintiff,)	
)	
vs.)	TENTATIVE FINDINGS
)	
JOHN N. GRIFFY,)	
)	
Defendant.)	

The Court has received the Revised Presentence Investigation Report ("PSR"), the parties' objections thereto (Filing Nos. 59, 64), and the Defendant's motion for downward departure (Filing No. 62). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The parties object to the drug quantity, as the quantity in the PSR exceeds the quantity stated in the plea agreement. The parties acknowledge, however, that the difference does not affect the base offense level. Nevertheless, the Court grants the parties' objections and finds the Defendant responsible for 31.5 grams of cocaine base.

IT IS ORDERED:

1. The parties' objections (Filing Nos. 59, 64) to the PSR are granted;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary

hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final;

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

5. The Defendant's motion for downward departure (Filing No. 62) will be heard at sentencing.

DATED this 26th day of November, 2010.

BY THE COURT:

S/ Laurie Smith Camp
United States District Judge